

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Bell Operating Company )  
Provision of Out-of-Region )  
Interstate, Interexchange Services )

CC Docket No. 96-21

RECEIVED

MAR 13 1996

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>1/</sup> Vanguard supports adoption of the safeguards proposed in the Notice, which are no more burdensome on the Bell Operating Companies (the "BOCs") than the safeguards now in place for interexchange service offered by non-BOC local exchange carriers. Given the unique risks that arise from BOC provision of interexchange service, the Commission would have ample justification to adopt more rigorous safeguards if it so desired.

I. INTRODUCTION AND SUMMARY

Vanguard is a long term provider of cellular service and is one of the major carriers operating today. Vanguard entered the cellular marketplace in 1984 and now is one of the 20 largest cellular carriers in the country. Vanguard's cellular systems serve 26 markets in the

---

<sup>1/</sup> Notice of Proposed Rulemaking, *Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, CC Dkt. No. 96-21, rel. Feb. 14, 1996 (the "Notice"). The comment date for the Notice was based on Federal Register publication, which occurred on February 21, 1996. See 61 Fed. Reg. 6607 (Feb. 21, 1996). Thus, these comments are timely filed.

No. of Copies rec'd  
List ABCDE

QY

eastern half of the United States; cover a geographic area containing more than 7.5 million people; and have approximately 400,000 subscribers.

In many of its markets, Vanguard competes against the cellular affiliates of BOCs, including affiliates of Bell Atlantic, NYNEX and BellSouth. Thus, Vanguard has a strong interest in assuring that these competitors do not take advantage of their affiliation with BOCs to engage in anticompetitive behavior. At the same time, Vanguard is cognizant of the Congressional intent, expressed in the Telecommunications Act of 1996 (the "1996 Act"), to permit BOC entry into interexchange services where doing so will enhance competition. Any rules the Commission adopts must balance the need to forestall anticompetitive behavior against the intent to enhance competition through BOC offerings of interexchange services.

The rules proposed in the Notice achieve, at least in rough terms, an appropriate balance between these competing interests. While, as shown below, there are significant risks to BOC entry into even out-of-region interexchange markets (risks that are greater where a BOC affiliate provides cellular service), it is reasonable for the Commission to apply the same rules to BOCs that it applies to other local exchange carriers. Consequently, Vanguard supports the Commission's proposals to: (1) require BOCs to choose between offering their out-of-region interexchange services through a separate subsidiary or being treated as dominant carriers for those services; and (2) treat interLATA services as unregulated services for the purposes of the joint cost rules and affiliate transactions.

## **II. Safeguards Are Needed for BOC Provision of Interexchange Services, Especially in the Case of Commercial Mobile Radio Service.**

The Notice identifies certain risks that will arise when BOCs enter the interexchange marketplace, including shifting of costs from interexchange services to local exchange

services. Notice at ¶ 10. As shown below, these risks are real, and in fact are heightened in the context of commercial mobile radio services (“CMRS”) such as cellular.

Consequently, there is a need for safeguards to govern BOC provision of interexchange services, including out-of-region long distance.

First, the Commission has properly identified the risks that arise from BOC provision of interexchange services. The BOCs will have significant incentives to engage in cost-shifting, discrimination and other anti-competitive behavior. They also will be able to engage in those activities because they control “bottleneck local exchange facilities in their in-region states.” *Id.* at ¶ 9. As the Commission long ago established, such anticompetitive behavior hurts both consumers and competitors.<sup>2/</sup>

These concerns about anticompetitive behavior led the Commission to conclude that independent LECs providing interexchange services should be required either to offer those services through a separate subsidiary or to accept dominant carrier regulation of their interexchange services. As the Notice explains, the separate subsidiary requirement for these purposes is not as rigorous as the subsidiary mandated under the Commission’s *Computer II* rules for BOC provision of information services. *Id.* at ¶ 10. Indeed, the separation proposed in the Notice is much less stringent than the subsidiary required for BOC in-region interexchange services by the 1996 Act. *See* 47 U.S.C. § 272(b).

The risks of anticompetitive behavior are heightened for BOC interexchange offerings because the BOCs are in a better position to engage in anticompetitive behavior than almost

---

<sup>2/</sup> *See, e.g.,* Second Computer Inquiry, *Final Order*, 77 F.C.C.2d 384, 463 (1980) (discussing benefits of preventing cross-subsidization).

any other LEC.<sup>3/</sup> Each of the BOCs serves, on average, about one-eighth of all telephone subscribers, and BOC regions are largely contiguous. This means that BOCs receive more calls than other companies and, as a consequence, have more opportunities to manipulate the price and quality of terminating access than other companies. The large size of the BOCs also provides them with more opportunities for cost shifting than are available to independent LECs because there are more services and organizational niches to which interexchange costs can be shifted.

There is even more reason to require safeguards in the context of the CMRS marketplace. Most independent LECs do not have significant interests in cellular or other CMRS services, but the BOCs are among the largest CMRS providers. BOC involvement in CMRS gives them the opportunity to be involved in each of the three elements of an interexchange call — as the originating carrier, the interexchange carrier and the terminating carrier, increasing both the opportunities to shift costs and the benefits of doing so. This is not an idle concern. For instance, Bell Atlantic-NYNEX Mobile could carry interexchange calls to Philadelphia, inside the Bell Atlantic region, from customers in its Phoenix cellular system, outside the Bell Atlantic region. Moreover, every BOC has out-of-region CMRS interests, ranging from the portion of Arizona covered by Pacific Bell's Los Angeles MTA PCS license to Bell Atlantic's extensive interests in the northeastern and southwestern parts

---

<sup>3/</sup> GTE is comparable in size to the BOCs, but does not have service areas comparable to the large, contiguous BOC service areas. In addition, GTE appears to be covered by the existing rule for independent LECs.

of the country. PCS has only exacerbated the problem as the BOCs have made significant efforts to expand the footprints of their CMRS coverage.<sup>4/</sup>

While the risks of anticompetitive behavior generally are heightened by BOC involvement in CMRS, they are particularly great in the northeastern part of the country, where Bell Atlantic-NYNEX Mobile, a joint venture of Bell Atlantic and NYNEX, operates. For instance, in Allentown, Pennsylvania, where Vanguard operates the Block A cellular system, Bell Atlantic-NYNEX operates the Block B system. Because Allentown is outside the NYNEX region, NYNEX can now offer long distance service to Bell Atlantic-NYNEX customers, subject only to the safeguards the Commission adopts in this proceeding. (Similarly, Bell Atlantic could offer long distance service to Bell Atlantic-NYNEX cellular customers in the NYNEX region, including the major metropolitan areas of New York and Boston.) NYNEX's interest in the Allentown cellular system and other Bell Atlantic-region cellular systems gives it additional incentives to engage in anticompetitive behavior because such behavior could benefit both its long distance operations and its cellular affiliate. Bell Atlantic has the same incentives for those cellular systems in the NYNEX region.

Moreover, because of the unique geographic relationship between Bell Atlantic-NYNEX Mobile and its two owners, these incentives are greater than they would be for other BOCs, such as Ameritech or BellSouth. Given that as much as 60 percent of all interexchange traffic involves the Bell Atlantic region, the NYNEX region or both, the

---

<sup>4/</sup> BOC PCS licenses cover a combined population of more than 114,000,000 people. Applications for A and B Block Broadband PCS Licenses, *Order*, DA 95-1411 (Wireless Telecom. Bur.), rel. June 23, 1995, at Appendix A. Public Notice, "Auction Notice and Filing Requirements," Rep. No. AUC-94-04, Auction No. 4, rel. Sep. 19, 1994, Appendix.

incentives for anticompetitive behavior by Bell Atlantic and NYNEX are high.<sup>5/</sup> Bell Atlantic NYNEX Mobile's recent announcements that it intends to offer long distance service to all of its cellular customers and that it has entered a long distance resale agreement demonstrate that the risks are not remote but are occurring right now.

The significant incentives to anticompetitive behavior for landline interexchange service, by themselves, are enough to justify the adoption of safeguards, as the Commission has done for independent LECs. When the additional incentives for anticompetitive conduct created by BOC interests in CMRS providers are considered, the case for safeguards becomes compelling.

### **III. The Proposed Safeguards Are Not Onerous.**

Logic and the evidence of the range of BOC market power demonstrates that safeguards for BOC provision of interexchange service are necessary, and almost certainly more necessary for the BOCs than for independent LECs. In this context, the safeguards proposed in the Notice are not excessive and, in fact, may be less stringent than the Commission might otherwise choose to impose. In fact, the Commission's proposed safeguards are less burdensome than those imposed less than a year ago by the MFJ Court for wireless interexchange service. Given the BOCs' market power in local exchange service, it is perfectly reasonable for the Commission to adopt the same safeguards for BOCs as for independent LECs.

First, the safeguards proposed in the Notice are not particularly onerous. They amount, in large part, to accounting requirements that will permit scrutiny of BOC activity.

---

<sup>5/</sup> See Communications Daily, Dec. 19, 1995, at 3.

See Notice at ¶ 4. While the separate affiliate is required to use separate facilities, that should impose little or no additional burden on BOC provision of services outside their local exchange service areas.<sup>6/</sup> If a BOC does not wish to comply with these requirements, it can opt to be treated as a dominant carrier.

Similarly, it will not be burdensome for the BOCs to comply with the requirement to treat long distance as an unregulated service. BOCs account for certain services on this basis already. Moreover, treating out-of-region long distance as an unregulated service for accounting purposes is merely a matter of setting up the initial accounting for service, not changing existing procedures.

The safeguards proposed in the Notice are much less onerous than those imposed by the MFJ Court less than a year ago in the *Wireless Interexchange Opinion*<sup>7/</sup>. Under the waiver granted in that opinion, the BOCs were permitted to offer wireless interexchange services, subject to a series of conditions. The conditions included: (1) offering wireless interexchange service through a separate subsidiary; (2) developing detailed equal access plans to prevent discrimination; (3) offering only resold interexchange service rather than using the BOC's facilities; (4) waiting to offer interexchange service until bypass services are available between the MTSO and interexchange carrier facilities; and (5) separate marketing of interexchange wireless service and local wireless service. The MFJ Court imposed these conditions because it found, as did the Justice Department in evaluating the proposed waiver,

---

<sup>6/</sup> The BOCs do not have any significant landline facilities outside their regions.

<sup>7/</sup> See Opinion, *United States v. Western Electric Company*, Civ. Act. No. 82-0192, (D.D.C. Apr. 28, 1995) (the "*Wireless Interexchange Opinion*").

“that the conditions would not eliminate the risk of discrimination, but instead would merely reduce the risk to ‘acceptable levels.’” *Wireless Interexchange Opinion* at 20.

The proposed rules would give the BOCs considerably more freedom than they were granted in the *Wireless Interexchange Opinion*. Indeed (and consistent with the 1996 Act), the BOCs would not be required to satisfy any conditions before they begin providing out-of-region interexchange services.<sup>8/</sup> In addition, under the proposed rules they could offer their services either on a resale basis or through their own facilities. They also would not be subject to the waiver’s requirement that they market local (*e.g.*, cellular) and long distance services separately. In short, the proposed rules are considerably more liberal than the conditions in the *Wireless Interexchange Opinion*.<sup>9/</sup>

---

8/ Some BOCs have indicated that they object even to the requirements proposed in the Notice because they believe that the 1996 Act does not permit the Commission to impose a separate subsidiary requirement for out-of-region services. That is untrue. The 1996 is silent as to the regulatory safeguards that the Commission may adopt for out-of-region services. All the 1996 Act does is specify that the separate subsidiary described in Section 272(c) shall not be required for out-of-region services. *See* 47 U.S.C. § 272(a). As described above, the subsidiary proposed in the Notice is less onerous than the Section 272(c) subsidiary. Even if the 1996 Act did forbid the Commission from requiring a separate subsidiary, the proposed rules do not contain such a requirement. Instead, they would give BOCs the choice of dominant carrier regulation (which is not affected by the 1996 Act) or operation through a separate subsidiary. Notice at ¶13.

9/ It should be noted, however, that the terms of the *Wireless Interexchange Opinion* remain in effect for in-region wireless interexchange service, such as any long distance service provided by Bell Atlantic from its Allentown system. While the 1996 Act grants BOCs the authority to provide “incidental” interLATA CMRS services, that authority should be read to permit only such interLATA services as are necessary to offer CMRS in the normal course of business, and not to permit offering regular long distance service to CMRS customers. *See* 47 U.S.C. § 272(b)(3), (g). It is noteworthy that each of the services included within the definition of “incidental” services is provided in connection with a service that is not itself an interexchange telecommunications service, *e.g.*, “signaling information used in connection with the provision of telephone exchange service or exchange access by a local exchange carrier.” 47 U.S.C. § 272(g)(5). The conference report on the 1996 Act also describes the incidental services exception as applying to “services . . . ‘incidental’ to the provision of another service,” confirming that Congress did not intend by



At the same time, there is no evidence that the competitive environment has changed meaningfully since the *Wireless Interexchange Opinion* was adopted. The factors that led both the Justice Department and the MFJ Court to conclude that significant conditions were necessary before BOCs could offer wireless interexchange services remain in place today. Moreover, Congress made no findings that would permit the Commission to conclude that the competitive environment that existed in 1995 no longer exists today. *See* Conference Report at 147. Thus, the *Wireless Interexchange Order* would justify more stringent safeguards for wireless services than those proposed in the Notice.

Moreover, it would be inappropriate for the Commission to impose safeguards for either wireless or landline services that are less burdensome for BOCs than for independent LECs. As described above, the risks to competition and consumers from BOC entry into interexchange markets are greater than those that result from independent LEC entry into those markets. The risks come from both the scope of BOC service areas and the sheer size of the BOCs as compared to other LECs. The risks of anticompetitive behavior are exacerbated by the extensive BOC out-of-region CMRS holdings. *See supra* Part II. In that context, the existing safeguards for independent LEC provision of interexchange services also establish the minimum acceptable level of safeguards for BOC interexchange services.

#### **IV. Conclusion**

The Commission has proposed reasonable safeguards for BOC provision of out-of-region interexchange services. These safeguards are necessary to limit the ability of BOCs to

---

this exception to permit BOCs to offer traditional interexchange services in conjunction with CMRS or other services covered by the exception. H.R. CONF. REP. No. 458, 104th Cong., 2nd Sess. 147 (1996) (the "Conference Report").

engage in cost-shifting, discrimination and other anticompetitive activities. The safeguards are especially important for CMRS, where the BOCs have additional incentives and a greater ability to engage in anticompetitive behavior. Moreover, the proposed safeguards are the minimum necessary to protect consumers and competition, and impose a very small burden on BOC provision of interexchange service. For all of these reasons, Vanguard Cellular Systems, Inc. urges the Commission to adopt rules in accordance with the Notice and the positions described herein.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: 

Raymond G. Bender, Jr.  
J.G. Harrington

Its Attorneys

DOW, LOHNES & ALBERTSON,  
A Professional Limited Liability Company  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 776-2000

March 13, 1996

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 13th day of March, 1996, I caused copies of the foregoing "Comments of Vanguard Cellular Systems, Inc." to be served via hand delivery to the following:

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554  
(STOP CODE 0101)

The Honorable Andrew C. Barrett  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554  
(STOP CODE 0103)

The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554  
(STOP CODE 0105)

Ms. Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554  
(STOP CODE 1600)

The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554  
(STOP CODE 0106)

The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554  
(STOP CODE 0104)

Ms. Regina Keeney  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, DC 20554  
(STOP CODE 1600)

International Transcription Services, Inc.  
2100 M Street, NW, Suite 140  
Washington, DC 20037



Tammi A. Foxwell

\*Via hand delivery.